

Appl. No. 10/021,633
Amndt. dated 3-17-04
Reply to Office Action dated January 23, 2004

Remarks/Arguments

Claims 1, 2, 4-6, 12, 14-16, and 19-20 are under consideration in this application. Applicants respectfully request that the Examiner enter this Amendment under Rule 116 to claims 1-2, 4, 12, and 14-16; and cancel claims 5-6 and 20. Applicants submit that the instant Amendment places the claims in condition for allowance. The changes to the claims do not constitute the addition of new matter and full support for the changes may be found throughout the specification and claims as originally filed. Specifically, support for the amendments to the claims may be found *inter alia* in the instant Examples, beginning on page 24; at pages 52 through 60; at page 14, line 4-9; at page 37, Example 81; and at page 57, line 13 of the instant application as filed.

Claim Rejections -35 U.S.C. §112

On page 3 of the January 23, 2004 Office Action, the Examiner rejected claims 1, 5, 6 and 7 under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In response, Applicants have canceled claims 5, and 6, and amended claim one in order to more clearly and accurately describe the inventive subject matter. Specifically, applicants have replaced "substituted phenyl" in claim 1 with the specific substituent groups of the compounds exemplified and disclosed herein. Likewise, Applicants have replaced "substituted pyridyl" in claim 1 with specific substituents. Support for the amendments to claim 1 can be found *inter alia* in the instant Examples, beginning on page 24; at pages 52 through 60; at page 14, line 4-9; at page 37, Example 81; and at page 57, line 13 of the instant application as filed.

Applicants respectfully submit that the amended claims meet the requirements of 35 U.S.C. § 112, first paragraph and request that the Examiner withdraw the rejection under Section 112.

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Claim Rejections -35 U.S.C. § 103

On page 1 of the January 23, 2004 Office Action, the Examiner rejected claims 1, 2, 4-7, 12, 14, 15, 16, 19 and 20 under 35 U.S.C. § 103(a) as being allegedly unpatentable over the combined teachings of Danes, Wagner et al., Deyanov et al., Kester et al., Barchiesi et al., Moerkved, Schramm et al., Feranti et al., Abramovitch et al., I-VI, Peterson et al., and Aries.

By this Amendment, Applicants have amended instant claim 1 and canceled claims 5-6. Claim 7 was previously canceled. Claims 2 and 4 depend from claim 1. Applicants submit that instantly amended claim 1 is non-obvious and therefore patentable over the cited references for the reasons that follow.

The Examiner bases his rejection on the closeness of the structural relationship between the claimed compounds and the compounds disclosed in the combined cited references. The closest combined disclosure teaches unsubstituted pyridyl at the R¹ position whereas the instant compounds are pyridyl substituted by OC₁-C₆alkyl. The closest combined disclosure teaches unsubstituted or Me-substituted phenyl at the R² position whereas the instant compounds are phenyl substituted by very different substituents. The closest combined disclosure teaches halo-substituted phenyl at the R³ position whereas the instant compounds are biphenyl or phenyl substituted by C₁-C₆alkyl. The totality of these differences results in the disclosure of compounds which are not so structurally close to the compounds claimed herein as to render the claimed compounds obvious.

Applicants submit that instant amended claim 1 is non-obvious and therefore patentable over the references listed and request that the Examiner withdraw the rejection under Section 103.

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Conclusion

Applicants respectfully submit that they have in this Response properly accommodated, traversed or rendered moot each of the stated grounds of rejection in the January 23, 2004 Office Action. Applicants further request entry of this Amendment, which Applicants submit place the instantly pending claims in condition for allowance.

If the Examiner has any questions or believes further discussion will aid examination and advance prosecution of this application, a telephone call to the undersigned is invited. If there are any additional fees due in connection with the filing of this amendment, please charge any such fees to Deposit Account No. 23-0455.

Respectfully submitted,

3/17/2004
Date
Warner-Lambert Company
Patent Department (415S)
2800 Plymouth Road
Ann Arbor, MI 48105
(734) 622-2624

Michelle A. Sherwood
Michelle A. Sherwood
Attorney for Applicant(s)
Reg. No. 36,271